THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (M/S) No. 1086 of 2006.

Raj Kumar, Son of Shri Kishan Lal,
Resident of 114, Chhota Bharuwala, Clementown, Dehradun.

…Petitioner.

Vs.

1. Ved Prakash Goyal, Son of Dugal Kishor Gupta through his power of attorney Ismt. Santa Kumar, wife of Shri Darshan Kumar, Headmistress Y.S.School, Branana, District Sangrur.
2. Smt. Santa Kumar, wife of Shri Darshan Kumar, Headmistress Y.S.School, Barnana, District Sangrur.
3. Additional District Judge (F.T.C.-V), Dehradun.
4. Civil Judge, Division, Dehradun.

…**Respondents.**

Sri V.K.Bisht, Sr.Adv., assisted by Sri B.S.Thind, learned counsel for the petitioner.
Sri Paresh Tripathi, Learned Standing Counsel for the respondents.

Date August 14, 2006

P.C.: Hon'ble B.S. Verma, J.

By means of this writ petition, the petitioner has challenged the orders dated 10-12-2004 passed by the Civil Judge (Junior Division) Dehradun (Annexure no.7) and 24-7-2006 passed by learned Additional District Judge Dehradun (Annexure No. 9).

The petitioner's case is that he purchased certain land through registered sale-deed dated 26-7-1989 and entered into possession thereof. In the year 1991, the respondent no.1 instituted Civil Suit No. 761 of 1991 for seeking relief of declaration of the sale deed and null and void. During pendency of the suit on 26-7-1991, an agreement arrived at between the petitioner and the respondent no.1 thereby 2 Bigha, 5 Biswa land was given to the respondent no.1 and the remaining land was retained by the petitioner and the suit of the plaintiff-respondent no.1 was decided in terms of the compromise between the parties. Later-on, the power of attorney holder of

respondent no.1 Smt. Santa Kumar started interfering in the possession of the petitioner and started negotiating with the customers for sale of the respondent no.1 therefore the petitioner filed Suit No. 98 of 2002 before the Civil Judge (Junior Division) Dehradun for a decree of partition of the land in dispute as well as for permanent injunction. Along with the plaint, application for temporary injunction was also moved supported by an affidavit, which was allowed for time bound period and respondents filed objection and on merit the application (6-C) was rejected vide order dated 10.12.2004. The petitioner then went up in appeal before the Additional District Judge, but the appellate court also did not find favour with the petitioner and dismissed the appeal vide order dated 24-7-2006.

Having heard the rival contentions of the learned counsel for the parties and considered the material on record, I do not find any merit in this writ petition for the following reasons.

The petitioner-defendant Raj Kumar in the Civil Suit No. 761 of 1991 entered into compromise with the plaintiff Ved Prakash and admitted that the sale-deed dated 26.7.1989 is null and void. There is recital that in respect of 2 Bigha, 5 Bishwa land, the sale deed shall be deemed ineffective. Along with the compromise, the parties filed map in that suit, which were made part of the decree. It also shows that the disputed land had been shown in red ink in the map. Since the compromise decree dated 26-7-1991 had become final between the petitioner and respondent no.1 Ved Prakash, wherein the petitioners himself had treated the sale deed 26-7-1989 to be null and void and the controversy between the parties stood settled by the compromise deed and the map filed along with compromise. Thus prima facie it appears that the disputed land had already been demarcated/partitioned between the petitioner and the respondent no.1. The Civil Judge (Junior Division) Dehradun has rightly dismissed the temporary injunction application 6-C of the petitioner plaintiff on merit after the objection was filed by the defendant vide order dated 10-12-2004.

The appellate court vide order dated 24.7.2006 has also given categorical finding that there was demarcation of land on the spot, laying of boundaries walls and existence of separates of both the parties and accordingly confirmed the finding of the learned Civil Judge (Junior Division) Dated 10-10-2004.

The learned counsel for the petitioner could not point lout even a single istance which may indicate that the courts below fell into manifest error of law and that the courts below committed any illegality. The scope in the writ jurisdiction is very limited and there is concurrent finding of fact by the two courts below. There is nothing on record which calls for interference with the findings of facts recorded by the courts below.

Learned counsel for the petitioner lastly submitted that the Civil Suit filed by the petitioner has been pending since the year 2002, which may be ordered to be decided expeditiously. Even this submission of the learned counsel is a lame stand. None else but the petitioner himself is responsible for the delay in decision of the suit. However, in the interest of justice, the learned Civil Judge (Junior Division) Dehradun may be directed to expedite disposal of the suit on merit preferably within a period of six months.

For the discussions aforesaid, the writ petition is dismissed on merit. However, the trial court is directed to decide the civil suit no. 98 of 2002, Raj Kumar Vs. Ved Prakash and another, pending in that court expeditiously within a period of six months as far as possible. Both the parties shall co-operate with the trial court in the expeditious decision of the suit.

(B.S. Verma,J.)

RCP